



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Procurement
Instruction
Memorandum
No. 98-08
Oct. 2, 1998

MEMORANDUM FOR BUREAU CHIEF PROCUREMENT OFFICERS

FROM: Annelie M. Kuhn, Acting Director *Am Kuhn*
Office of Procurement

SUBJECT: DTAR Change 98-02, Changes to Parts 1019
(Reviewing the subcontracting plan and Liquidated damages)

Purpose: This DTAR change updates DTAR 1019.

Effective Date: Immediately.

Expiration Date: It will expire when superseded or cancelled.

Background: This PIM is issued to reflect recent revisions to the Federal Acquisition Regulation, as a result of FAC 97-05.

<u>Action:</u>	Remove DTAR pages:	Insert DTAR pages:
	19-5 through 19-8	19-5 through 19-8

The following summarizes the changes:

Changed 1019.705-4(d)(6) to 1019.705-4(d)(7). With the various revisions to this subpart, the wording is now at 1019.705-4(d)(7).

Added 1019.705-7(h) Provide a copy of the final decision to the SBS and the OSBP. This corresponds to the inclusion of language requiring the CO, for a contract subject to a commercial plan, to include in the contract file a copy of the final decision assessing liquidated damages. The DTAR requires that a copy of the final decision be provided to the SBS and the OSBP.

Attachment

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1019.705-4 Reviewing the subcontracting plan.

(a) Detailed instructions for reviewing subcontracting plans are contained in TD P 76-01.B.

(d)(1) Unless waived by the OSBP, prime contractors must be current in their submission of SF 294 and SF 295 reports in order to receive approval of new subcontracting plans.

(d)(7) The CO shall forward all subcontracting plans from the offeror(s) to the bureau SBS for initial review. The SBA PCR shall review all subcontracting plans, after review by the SBS, and prior to forwarding to the OSBP for approval. CO's shall provide the SBSs and the PCR each 5 workdays to review proposed subcontracting plans. Ideally, the SBS and PCR reviews should be performed concurrently. All subcontracting plans shall be submitted to the OSBP at least 10 workdays prior to the contract award date. Upon request, a copy of the proposed prime contract and the cost proposal shall be provided. A copy of the lead agency CO's approval of a master or commercial products subcontracting plan shall be attached. The OSBP approval shall be retained in the contract file.

1019.705-7 Liquidated damages.

(d) The CO shall consult with legal counsel, the SBS, and the OSBP prior to making a determination that the contractor failed to make a good faith effort to carry out its plan.

(e) Provide a copy of the final decision to the SBS and the OSBP.

(h) Provide a copy of the final decision to the SBS and the OSBP.

1019.708 Solicitation provisions and contract clauses.

(b)(70) Insert the clause at 1052.219-70, "SF 294 and SF 295 Reporting," in all solicitations and contracts requiring a subcontracting plan.

(b)(71) Insert the provision at 1052.219-71, "Subcontracting Plan," in all solicitations that will

require a subcontracting plan.

**Subpart 1019.8 -- Contracting with the
Small Business Administration (The 8(a)
Program)**

1019.800 General.

CO's may contract directly with 8(a) program participants. A contract may be awarded directly to an 8(a) firm on a sole source or competitive basis. (See PIM 98-06, including Memorandum of Understanding between the SBA and the Department that establishes streamlined procedures for expediting the award of 8(a) requirements.)

**1019.803 Selecting acquisitions for the 8(a)
program.**

(a) Responses to search letters shall be prepared by the SBS and coordinated with the CO.

(c) Once a product or service has been acquired successfully by an acquisition office on the basis of an 8(a) set-aside, all future requirements of that office shall be acquired using 8(a) set-aside procedures. If a CO determines there is no longer a reasonable likelihood that an offer can be obtained from a qualified 8(a) concern and award can be made at fair market prices, the repetitive set-aside must be withdrawn, using the procedures at 1019.506, prior to proceeding with the procurement on another basis.

**1019.803-71 Simplified Procedures for 8(a)
Acquisitions Under MOUs.**

Contracting activities may use the procedures of FAR Part 13 and DTAR Part 1013 to issue purchase orders or contracts, not exceeding \$100,000, to 8(a) participants. The \$100,000 limitation for use of FAR Part 13 applies to commercial and noncommercial items. The following applies to such acquisitions:

(a) Neither offering letters to, nor acceptance letters from, the SBA are required.

(b) The contracting activity shall use the SBA's PRO-Net database on the Internet

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(<http://www.sba.gov>) to establish that the selected 8(a) firm is a current program participant.

(c) Once an 8(a) contractor has been identified, the CO shall establish the price with the selected 8(a) contractor, prepare and issue a purchase order or contract in accordance with the provisions in FAR Part 13. The applicable clauses in FAR Part 19.811-3 shall be included in the award document.

(d) The CO shall issue the purchase order or contract directly to the 8(a) firm. The CO shall insert FAR clause 52.219-14, Limitations on Subcontracting, and DTAR clause 1052.219-72, Section 8(a) Direct Award, in all purchase orders and contracts awarded under this subsection.

(e) No later than the day that the purchase order is provided to the 8(a) contractor, the Treasury CO shall provide the cognizant SBA Business Opportunity Specialist, using facsimile or electronic mail, the following documents:

(i) a copy of the purchase order; and

(ii) a notice stating that the purchase order is being processed under the MOU. The notice shall also indicate that the 8(a) contractor will be deemed eligible for award and automatically begin work under the purchase order unless, within 2 working days after SBA's receipt of the purchase order, the 8(a) contractor and the Treasury CO are notified that the 8(a) contractor is ineligible for award.

1019.804 Evaluation, Offering and Acceptance.

1019.804-2 Agency offering.

(a) When applicable, notification shall identify that the offering is in accordance with the MOU identified in 1019.800.

1019.804-3 SBA acceptance.

1019.804-370 SBA acceptance under the MOU for acquisitions exceeding \$100,000.

(a) The SBA's decision whether to accept the requirement shall be transmitted to the contracting agency in writing within five working days of receipt of the offer.

(b) The SBA may require, and the contracting agency may grant, an extension beyond the five day limit.

(c) SBA's acceptance letter should be faxed or e-mailed to the offering contracting activity.

(d) If the offering contracting agency has not received an acceptance or rejection of the offering from SBA within five days of SBA's receipt of the offering letter, the procurement office shall contact SBA to ascertain the status of the acceptance letter.

(e) The contents of the acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

(f) The CO shall issue the contract directly to the 8(a) firm. The CO shall insert FAR clause 52.219-14, Limitations on Subcontracting, and DTAR clause 1052.219-72, Section 8(a) Direct Award, in all contracts awarded under this subsection.

(g) The CO shall forward to the SBA District Office service the 8(a) firm a copy of the contract with offer and acceptance letter, or modifications within five days after they are issued.

1019.805 Competitive 8(a).

1019.805-1 General.

(a)(2) For IDIQ contracts, the threshold will be applied to the maximum value of the contract, including options.

1019.805-2 Procedures.

(a) 8(a) acquisitions may be conducted using simplified acquisition procedures (see FAR Part 13).

(a)(1) For requirements exceeding \$100,000 processed under DTAR 1019.800, the CO shall submit the name, address, and telephone number of the low

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offeror (in sealed bid acquisitions) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA shall determine the eligibility of the firm(s) and advise the CO within two working days of receipt of the request. If the firm is determined to be ineligible, the CO shall submit information on the next low offeror or next apparent successful offeror, as applicable, to the cognizant SBA field office.

1019.806 Pricing the 8(a) contract.

(a) When required by FAR Subpart 15.4, the CO shall obtain certified cost or pricing data directly from the 8(a) contractor if the contract is being awarded under DTAR 1019.800.

1019.808 Contract negotiation.

1019.808-1 Sole source.

(a) If the acquisition is conducted under DTAR 1019.800, the 8(a) contractor is responsible for negotiating with the CO within the time established by the contracting office. If the 8(a) contractor does not negotiate within the established time and the CO cannot allow additional time, the CO may, after notification and approval by SBA, proceed with the acquisition from other sources.

(b) If the acquisition is conducted under DTAR 1019.800, the CO shall negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA may participate in the negotiations.

1019.811 Preparing the contracts.

1019.811-1 Sole source.

(d) If the award is to be made under 1019.800, the contract to be awarded by the contracting activity to the 8(a) firm shall be prepared in accordance with the contracting activity's normal procedures, given contract type and dollar amount, that the contracting activity would use for a similar, non-8(a) acquisition, except for the following:

- (1) The award form shall cite 41 U.S.C. 253

(c)(5) or 10 U.S.C. 2304 (c)(5), as appropriate, and 15 U.S.C. 637 (a) as the authority for use of other than full and open competition.

(2) Appropriate contract clauses shall be included, as necessary, to reflect that the acquisition is an 8(a) contract made under DTAR 1019.800.

(3) The contracting activity shall include SBA's requirement number on the award document for acquisitions exceeding \$100,000.

(4) A single award document shall be used between the agency and the 8(a) contractor. As such, a single signature by the agency's contracting officer who is identified under 1019.800 will suffice, i.e., an SBA signature will not be required. The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "Awarded to" or "Contractor name" block on the appropriate forms.

1019.811-2 Competitive.

(a) If the award is made under the delegation of 8(a) authority, competitive contracts for 8(a) firms shall be prepared in accordance with the same standards as 8(a) firms shall be prepared in accordance with the same standards as 8(a) sole source contracts. See DTAR 1019.811-1.

(b) If the acquisition is conducted under DTAR 1019.800, the process for obtaining signatures shall be as specified in DTAR 1019.811-1(d)(4).

1019.811-3 Contract clauses.

(d)(3) The CO shall insert the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with its Alternate III (Deviation), when the acquisition is processed under DTAR 1019.800.

(f) The CO shall insert the clause at DTAR 1052.219-72, Section 8(a) Direct Award, in solicitations and contracts that exceed \$100,000 and are processed under DTAR 1019.800. The clauses at FAR 52.219-11, Special 8(a) Contract Conditions;

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52.219-12, Special 8(a) Subcontract Conditions; and
52.219-17, Section 8(a) Award, shall not be used.

1019.812 Contract administration.

Awards under DTAR 1019.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause entitled, Section 8(a) Direct Award, that requires the 8(a) contractor to notify the SBA and the CO when ownership of the firm is being transferred.

1019.812-70 Information.

CO's shall promptly notify the SBA, and inform the SBS of 8(a) contractor performance problems.